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# ARNOLD & PORTER

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**Patrick J. Grant**  
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555 Twelfth Street, NW  
Washington, DC 20004-1206

September 24, 2002

**By Hand & Electronically**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: **Ex Parte Presentation** – Consolidated Application of EchoStar,  
General Motors and Hughes for Authority to Transfer Control  
**CS Docket No. 01-348**

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Dear Ms. Dortch:

Please find enclosed, for filing in the above-referenced docket, a letter (and attachments) from Pegasus Communications Corporation to EchoStar Communications Corporation that addresses Pegasus' continuing concerns regarding EchoStar's recent commercial activities. This letter is a follow-up to the materials filed with the Commission on August 27 and September 6, 2002.

Two additional copies of this letter and its enclosures are also being filed herewith.

If you have any questions regarding these materials or this ex parte presentation, please do not hesitate to contact me.

Sincerely yours,



Patrick J. Grant  
*Counsel for Pegasus Communications Corp.*

Enclosures

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# ARNOLD & PORTER

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Ms. Marlene H. Dortch

September 24, 2002

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cc (w/encls.): Jim Bird  
Catherine Crutcher Bohigian  
C. Anthony Bush  
Neil Dellar  
Susan M. Eid  
Barbara Esbin  
Marcia Glauberman  
JoAnn Lucanik  
Paul Margie  
John Martin  
Joel Rabinowitz  
Stacy Robinson  
Marilyn Simon  
Rodney Small  
Donald Stockdale  
Peter Tenhula  
Bryan Tramont  
Douglas Webbink  
Harry Wingo  
Susanna Zwerling  
David R. Goodfriend



September 24, 2002

Via Fedex &  
Facsimile to: (303) 723-1699

Christopher M. Melton  
Senior Counsel  
EchoStar Communications Corporation  
5701 S. Santa Fe Drive  
Littleton, CO 80120

Dear Mr. Melton:

We understand from EchoStar's September 12, 2002 filing with the Federal Communications Commission that EchoStar has finally communicated with its dealer base, through an August 2002 letter and a televised "Charlie Chat", in order to address its agents' widespread use of misleading sales practices that have been the subject of our letters to EchoStar over the past 11 months. Unfortunately, we continue to receive many reports that EchoStar agents or employees continue to use misrepresentations about the merger between EchoStar and Hughes to solicit the conversion of Pegasus customers or entice new customers. Moreover, we still have not received a response to our letter of September 6<sup>th</sup>, which directly implicated a specific individual who appears to be an EchoStar employee. It is also not at all clear to us, despite your representations to the contrary, whether other reported incidents involve EchoStar employees. By this letter, we are providing to you additional reports and addressing EchoStar's September 12<sup>th</sup> letter to the FCC.

Set forth below are examples of recent reports brought to our attention.

Fairmount, Georgia: A subscriber reported being contacted several times during the month of July by telemarketers working on behalf of DISH Network. The DISH Network agents represented that DISH Network will own DIRECTV and that, "its just a matter of time until the paperwork is filed." The agents claimed that they were offering customers three free months of service and four receivers, and wanted customers to convert immediately rather than having a rush once the paperwork and DIRECTV acquisition is finalized. The customer reports that she told the telemarketer that she did not want DISH Network and in response was told she would have to switch anyway, so the customer might as well switch now. Our customer reports that these claims were made by Jason Wells and/or Lori Peterson and that these individuals provided

Letter to Christopher Melton

September 24, 2002

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a call back telephone number of 800-942-2407. A reference code of RS 240 was also given to the customer.

Bartlesville, Oklahoma: A Pegasus subscriber residing in Bartlesville, Oklahoma reports having gone to the local Radio Shack to have her equipment serviced. Instead of addressing her service need, the salesman told her that since DISH is merging with DIRECTV, and she would have to convert anyway, she should just sign up with DISH. The Radio Shack is the Washington Park Mall location in Bartlesville, Oklahoma.

Palestine, Texas: In early September, a Pegasus subscriber residing in Palestine, Texas reported having visited Chapman Advanced Satellite also in Palestine, Texas, where a sales person advised her that she needed to switch to DISH because it had acquired DIRECTV. Our subscriber advises that upon learning that she did not have to switch, she cancelled the contract and did not allow the installation of the DISH equipment.

Cartersville, Georgia: A Cartersville, Georgia subscriber reported being solicited on or about August 25th by an unidentified DISH Network agent who was soliciting sales in the parking lot of the BP gas station located at 786 West Avenue in Cartersville. The customer was told that DIRECTV merged with DISH Network, and that he needed to switch his equipment. He was told that after September he would lose all sports programming.

Vienna, Georgia: A Pegasus subscriber residing in Vienna, Georgia reports being visited by an unidentified door-to-door sales agent of DISH Network who advised that Pegasus was going out of business, and that she needed to switch her service to DISH Network to avoid losing programming. The sales agent who was driving a white van indicated that he would be back in November.

Foley, Alabama: A Pegasus subscriber residing in Foley, Alabama reports that on August 22, 2002, he was visited by a door-to-door salesman who attempted to convert him to DISH Network programming. The DISH agent told our subscriber that Pegasus was moving to Canada and would be out of business in the United States by November, and that he must switch to DISH to maintain service. Our subscriber could not identify the door-to-door salesman, and could only confirm that the salesman was selling your service.

New York Mills, Minnesota: A Pegasus subscriber residing in New York Mills, Minnesota reported receiving a call from a telemarketer representing DISH Network on or about August 15<sup>th</sup>. The telemarketer told our subscriber that Pegasus was going out of business, and she would be required to switch providers. The telemarketer attempted to convince her that in order to maintain the same programming, she would have to switch to DISH.

Odessa, Missouri: A Pegasus subscriber residing in Odessa, Missouri reported receiving a call from an unidentified telemarketer on August 17<sup>th</sup> who advised the customer that she needed to switch to DISH because of the merger between Dish and DIRECTV.

Copemish, Michigan: A Pegasus subscriber residing in Copemish, Michigan reported being called by an unidentified telemarketer representing DISH Network on or about August 21, 2002. The subscriber reports that the telemarketer told him that DISH Network was merging with DIRECTV, and he needed to switch services.

Greensboro, Georgia: A former Pegasus subscriber residing in Greensboro, Georgia reported that he was converted from DIRECTV to the DISH Network service by an individual named Jimmy from Perry, Georgia, who was going door-to-door in his community. Your agent, Jimmy, told our subscriber that DIRECTV is going out of business and he had to switch to DISH.

Colstrip, Montana: A Pegasus subscriber residing in Colstrip, Montana reports having been contacted by an unidentified telemarketer calling on behalf of DISH Network in early August. Your agent reportedly advised our subscriber that DISH Network and Pegasus were going to merge within a week and offered our subscriber a deal on equipment if she would beat the rush and switch to DISH right away.

Millen, Georgia: A Pegasus subscriber residing in Millen, Georgia contacted Pegasus and reported a door-to-door solicitation by a DISH Network agent by the name of Kenneth who had visited his home on August 23, 2002. Your agent, Kenneth, told our subscriber that DISH and DIRECTV had merged, and that if he did not switch he would lose his programming.

Bainbridge, Georgia: A Pegasus subscriber residing in Bainbridge, Georgia reported being visited, on August 20, 2002, by an unidentified door-to-door sales agent of DISH Network who claimed that DISH had purchased DIRECTV. Your agent explained to the customer that she needed to switch to DISH to avoid losing service. The sales agent who had equipment with him advised the subscriber that since she would have to switch to DISH eventually, she might as well do it right away.

Lumber City, Georgia: A Pegasus subscriber residing in Lumber City, Georgia reported being visited by an unidentified door-to-door sales agent of DISH Network on or about August 26, 2002. The DISH Network agent told him that DISH and Pegasus would become one company once the merger was complete, so he should switch services now.

Sulphur Springs, Texas: A Pegasus subscriber residing in Sulphur Springs, Texas reported being approached by a DISH Network sales agent on or about August 27, 2002. Your agent told our subscriber that he needed to switch to DISH by December because DISH owns DIRECTV and the equipment would become obsolete.

Nephi, Utah: A Pegasus subscriber residing in Nephi, Utah reported being visited on or about August 24, 2002 by a door-to-door salesman who was selling the DISH Network service. Our subscriber reports that your agent told him that DISH had acquired DIRECTV, and that many satellites were being taken out of the sky, so eventually they were going to be customers of DISH Network because they would be the only provider. Our subscriber reports that your

agent's name was John and that he provided a call back number of (801) 358-6705. This number is answered by a DISH sales agent by the name of Atlas Ventures.

Breckenridge, Texas: A Pegasus subscriber residing in Breckenridge, Texas reported being contacted by an unidentified telemarketer on or about August 20, 2002 who was selling DISH Network. Our subscriber reports that your agent told her that Pegasus was going out of business and that in order to keep her service she would have to switch. The customer described the telemarketer as very pushy.

Woodward, Oklahoma: A Pegasus subscriber residing in Woodward, Oklahoma reported receiving a flyer in the mail indicating that DISH Network had bought DIRECTV and that she needed to switch to DISH now to avoid the rush after the merger went through. The subscriber reported that an unidentified telemarketer had called her on or about August 21, 2002 to follow up on the flyer. Fortunately, the subscriber was skeptical of the claim and did not convert. Unfortunately she discarded the flyer.

Meadville, Missouri: A Pegasus subscriber residing in Meadville, Missouri reported being contacted on August 20, 2002 by an unidentified telemarketer who was selling the DISH Network service. Our subscriber reported that your agent told her that DISH is buying out DIRECTV and as a matter of formality they had to wait for it to pass through the FCC, but that she may as well switch now to avoid the rush and get a better monthly rate on programming.

Richland, Michigan: A Pegasus subscriber residing in Richland, Michigan reported having been contacted a few times on and around August 23, 2002 by a telemarketer by the name of USA Cable Company out of Hillsdale, Michigan who was selling the DISH Network service. USA Cable Company provided our subscriber with a call back telephone number of (517) 439-0026. USA Cable Company is apparently also known as Digital TV Inc. Our subscriber reported that your agent told him that DIRECTV had been acquired by DISH Network and he would no longer be able to receive programming from Pegasus after October 2002. He was told that he would need to convert to DISH Network in order to maintain services because DISH now controlled DIRECTV.

Kansas, Oklahoma: A Pegasus subscriber residing in Kansas, Oklahoma reported being visited by an unidentified door-to-door salesman selling the DISH Network service on or about August 21, 2002. Our subscriber reported that your agent told him that Pegasus had sold his account and he had to switch in order to maintain services. He was further told that he would most likely lose services within 24-48 hours.

Thompsonville, Michigan: A former Pegasus subscriber residing in Thompsonville, Michigan reported being contacted on or about August 4, 2002 by a DISH Network agent who called to tell him that DISH Network had acquired DIRECTV and that they would come out to his home to change his equipment. Our former subscriber reports that this DISH agent was Krohn's Satellite Service of Coleman, Michigan. We believe that this agent's unscrupulous activities may be a continuation of practices previously reported to you in our January 17, 2002 letter and attributed to "Crone" Satellite Service.

Vicksburg, Michigan: A former Pegasus subscriber recently reported that he had been converted to the DISH Network service in June of 2002 by a DISH Agent whose identity he could not recollect. In order to obtain the customer's consent to the conversion, your Agent reportedly told our former customer that DISH Network and DIRECTV were merging so he would have to take out the DIRECTV equipment but would set him up with a "really sweet deal." Your agent assured our former subscriber that he would handle having his Pegasus account disconnected. Our former subscriber called us after he realized that his account had not been disconnected, but rather it had continued to accrue charges.

Keller, Texas: A Pegasus subscriber residing in Keller, Texas reported that on or about August 6, 2002, he was visited by an unidentified door-to-door salesman selling the DISH Network service. Your agent attempted to convince our subscriber that he would have to change out all of his equipment because DISH Network had acquired DIRECTV.

Midlothian, Texas: Pegasus received a letter from a former subscriber residing in Midlothian, Texas explaining why he had not paid his most recent month's balance. In this letter the subscriber explains that, "a salesman from DISH Network came to our house and told us that Pegasus was going out of business and DISH Network was trying to fill the void." In his letter the subscriber goes on to ask, "Were we mislead by the DISH representative? Is it a fact that Pegasus is going out of business?" Our former subscriber reports that your sales agent, a man named Nick, gave him a telephone number of (469) 964-6801 where he could be reached. Further he left a work order that had the name Digital-Link Satellite in Arlington, Texas. The work order listed the telephone number as 888-802-3474.

Ceresco, Michigan: A Pegasus subscriber residing in Ceresco, Michigan called to report having received a telephone solicitation on August 29, 2002 from a DISH Network agent based in Saginaw, Michigan. The agent attempted to influence the customer to switch telling him that DISH Network had purchased DIRECTV and the acquisition would be completed by mid-September.

Richmond, Missouri: A former Pegasus subscriber residing in Richmond, Missouri reports switching to DISH Network as a result of a telephone solicitation received on August 2, 2002 from a DISH Network agent by the name of Alisa from Excelsior Springs, Missouri. Your agent is reported to have said that DISH Network is merging with DIRECTV and in order to continue receiving services the customer would either have to switch to DISH or pay \$75 to get a new card to continue receiving services.

EchoStar states in its September 12<sup>th</sup> letter that our examples "lack documentation." Unfortunately, consumers pressured by unexpected and unseemly sales practices do not often record the type of information that would be helpful to us in investigating the reported practices. When there is certain information lacking, you are in a much better position to investigate the occurrence. That being said, there is certainly enough information in many if not most of the

scores of examples set forth in our correspondence for you to investigate the specific occurrences. Moreover, these examples, even when lacking in sufficient detail for investigatory purposes, illustrate that: (i) Pegasus has received a large volume of distinct reports of these misleading sales practices; (ii) the incidents are national in scope; (iii) the practices have continued despite our many requests that EchoStar take affirmative action to halt them; and (iv) there is a need for EchoStar to address the issue with all of its agents, not just those agents identified in our correspondence.

In your September 12<sup>th</sup> letter as well as your letter of September 6<sup>th</sup>, both of which are enclosed, you represent that the reported incidents do not involve EchoStar employees. First, as noted above, you have not responded to our letter of September 6<sup>th</sup>, which reports an incident involving what appears to be an EchoStar employee. Second, except where we identify a dealer, we have seen no evidence that the reported incidents do not involve EchoStar employees. Third, as previously expressed to you, we are concerned that EchoStar sales management is encouraging bad behavior. It has been reported to us that when asked about the merger at an August 7, 2002 sales meeting relating to the launch of local channels in Tulsa, DISH Area Sales Manager James Reily replied to the effect that when the merger is completed, "Pegasus will have to give us all of their subscribers."

In similar fashion to your September 6, 2002 letter, EchoStar's September 12<sup>th</sup> letter to the FCC questions our motivations in making public our communications with EchoStar on the subject of deceptive sales practices. As stated in our letter of September 11<sup>th</sup>, which is enclosed, this suggestion is particularly disingenuous in light of EchoStar's refusal over the course of 11 months to adequately address in a private forum these practices and your merger partner's television commercials relating to the deceptive sales practices of its "competitors." Our letter of September 11<sup>th</sup> also addresses your proposal that we enter into a confidentiality agreement with EchoStar in order for EchoStar to share its investigative results with Pegasus. As indicated in that letter, Pegasus will not agree to restrict its ability to pursue or assist others in pursuing legal remedies against the individuals or entities responsible for the incidents.

You also state in your letter that EchoStar does not know of any attempts made by Pegasus to address these practices, again impugning our motives. First and foremost, we have expended resources investigating the reported incidents and trying to understand the magnitude of the unreported incidents. Second, we have pushed hard in our failed attempts for over 11 months to cause EchoStar to rein in this behavior. Third, we have been inserting warnings into our customer bills, similar to the warnings that DIRECTV has aired on its barker channels (Channels 243 and 517) and the commercials DIRECTV has been broadcasting on channels like ESPN. Fourth, we are instituting a series of lawsuits against retailers, commencing this week. We are hopeful, that these steps in addition to certain other actions we are taking, will put an end to these practices.

In conclusion, we request that EchoStar (i) investigate the incidents described in this letter and continue to investigate those described in our prior letters, (ii) investigate and report to us whether EchoStar's own sales and marketing practices have encouraged these practices



Letter to Christopher Melton  
September 24, 2002  
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among its agents, and (iii) continue to take affirmative action to cause agents and employees of EchoStar to cease and desist from such practices.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark E. Eyer', with a long horizontal flourish extending to the right.

Mark E. Eyer  
Assistant General Counsel

enclosures

cc: Robert M. Hall, Esquire  
via Fedex & Facsimile to (310) 964-4991  
David K. Moskowitz, Esquire  
via Fedex & Facsimile to (303) 723-1699



September 11, 2002

Via Fedex &  
Facsimile to: (303) 723-1699

Christopher M. Melton  
Senior Counsel  
EchoStar Communications Corporation  
5701 S. Santa Fe Drive  
Littleton, CO 80120

Dear Mr. Melton:

Thank you for your September 6, 2002 response to our August 27, 2002 letter. Our September 6, 2002 letter which requested a response to our August 27, 2002 letter and pointed out additional instances of deceptive merger based solicitations was obviously transmitted before we received your response.

We see no evidence that you are addressing these deceptive sales practices with the urgency required under the circumstances. *While your response claims that you take our concerns very seriously, you do not tell us what actions you are taking to prevent the occurrence of future incidents. We had hoped that we would see a more concerted effort by EchoStar to end the practices that we have continued to bring to your attention over the last ten months.*

Further, we reject as completely unfounded your suggestion that because we have made public our correspondence with EchoStar, we are motivated by "agendas" other than resolving the issues at hand. This suggestion is particularly disingenuous in light of EchoStar's refusal during the last 10 months to adequately address in a private forum the misleading and deceptive sales practices described in our letters, and your merger partner's television commercials relating to the deceptive sales practices of its "competitors." As explained in our ex parte filing with the FCC on August 27, 2002, we believe the correspondence between EchoStar and Pegasus is relevant to matters discussed with the Commission Staff on July 11, 2002. We also believe that publicizing the correspondence between our companies has been necessitated by EchoStar's dismissive responses to our concerns over a period of 10 months as well as the significant increase in deceptive sales practices by EchoStar agents and/or employees over the last two months.

Letter to Christopher M. Melton

September 11, 2002

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In your letter, you suggest that you will only share with us the results of your investigation if we execute a confidentiality agreement. A confidentiality agreement is entirely inappropriate under the circumstances. Pegasus will not agree to restrict its ability to pursue or assist others in pursuing legal remedies against the individuals or entities responsible for the incidents.

In order to facilitate your investigations, we have provided and will continue to provide to you information that we have relating to incidents of deceptive sales practices of EchoStar agents and/or employees. We cannot, at this time, make any suggestions as to what corrective actions you should take with respect to particular incidents until we know the results of your investigations, the scope of the damage to Pegasus and its subscribers and the remedial action that the particular circumstances warrant.

In furtherance of the foregoing, we renew the demands made in our last two letters that EchoStar immediately: (i) investigate the practices reported to it; (ii) investigate whether such practices are being more widely deployed; (iii) investigate whether such practices have been engaged in or encouraged by EchoStar employees such as its sales personnel; (iv) provide to Pegasus a written report detailing the nature and scope of the investigations, including a list of retailers (and their geographic areas of operation) that have been engaged in these practices; and (v) take affirmative action to cause agents of EchoStar (and EchoStar employees) to cease and desist from such practices.

Sincerely,



Mark E. Eyer  
Assistant General Counsel

Cc: Robert M. Hall, Esquire  
via Fedex & Facsimile to (310) 964-4991  
David K. Moskowitz, Esquire  
Via Fedex & Facsimile to (303) 723-1699



ECHOSTAR COMMUNICATIONS CORPORATION

September 12, 2002

**Via ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re:** Consolidated Application of Echostar Communications Corporation, Hughes Electronics Corporation, and General Motors Corporation for Authority to Transfer Control, CS Docket No. 01-348. *Ex Parte*

Dear Ms. Dortch:

In an *ex parte* submission dated August 27, 2002, Pegasus Communications Corporation ("Pegasus") forwarded to the Commission correspondence between Pegasus and EchoStar Communications Corporation ("EchoStar") concerning reports that certain individuals have used inappropriate sales tactics to market EchoStar's DISH Network service. Specifically, Pegasus stated that sales pitches had been made based on misleading or inaccurate statements concerning the status of EchoStar's pending merger with Hughes Electronics, and the merger's effect on DBS service to subscribers.

Echostar takes every such allegation very seriously, and investigates each one. Unfortunately, that investigative effort has been hampered by the fact that in many cases the allegations made by Pegasus lack documentation. EchoStar's conclusions to date have differed materially from the conclusions reached by Pegasus. In many cases, EchoStar has not been able to corroborate many of Pegasus's allegations. Sometimes, for example, it is difficult to identify the source of the statements cited by Pegasus, including whether the source is even a retailer who sells EchoStar products, and the incidents described otherwise lack specific substantiation. *See, e.g.,* Pegasus's August 27, 2002 Letter to Chris Melton of Echostar, at 2 (describing instances in which a Pegasus subscriber in Climax, Michigan and a subscriber in Athens, Michigan, were contacted by "an unidentified DISH Network representative" – while EchoStar is not certain what is intended by the term "DISH Network representative," its investigation has confirmed no EchoStar employee was involved, and based on the sketchy information provided EchoStar has been unable to identify any local retailer involved in the alleged activity); *see also* Letter from Chris Melton, EchoStar, to Mark Meyer, Pegasus (dated Jan. 21, 2002) (explaining that one alleged instance of misleading statements concerning the effect of the merger on DBS

subscribers had nothing to do with the merger at all – the marketing campaign was part of a program to convert MMDS subscribers to EchoStar).

EchoStar has requested additional information from Pegasus concerning each of the issues Pegasus has raised. EchoStar has also responded to each of the issues raised by Pegasus as best as possible given the limited information provided and the failure of Pegasus, in most cases, to supplement the original sketchy information. It is noteworthy that whenever Pegasus contacts EchoStar on this matter, EchoStar responds quickly, never failing to reply to each of Pegasus' letters.<sup>1</sup>

In order to share investigative results with Pegasus, which often include sensitive and confidential information with respect to specific retailers and consumers, it is necessary that EchoStar obtain assurance from Pegasus that the information will remain confidential. Unfortunately, the ability of EchoStar to investigate and share the results of its investigations with Pegasus was severely hampered by Pegasus's refusal to respect the confidentiality of that material, as expressed by Pegasus in a recent letter stating that they refuse to sign a standard confidentiality agreement between our companies. Consequently, while EchoStar will continue to investigate each and every allegation forwarded by Pegasus, EchoStar will in the future be severely limited in its ability to investigate and share investigative results with Pegasus.

Notably, EchoStar does not know of any attempts made by Pegasus to take action against any retailer, leading EchoStar to further question Pegasus' motives with respect to these matters. If Pegasus' allegations are accurate, then a number of avenues would be available for Pegasus to take direct action against offending parties, including but not limited to cease and desist letters, phone calls and the institution of litigation or other regulatory proceedings against the offending parties. In one recent telling example, EchoStar's investigation found that a retailer about whom Pegasus complained was actually a large Pegasus retailer. Pegasus certainly could have contacted the retailer directly, and could have taken action based on its direct relationship with the retailer. Instead, our investigation has revealed that Pegasus did not contact this retailer, apparently opting instead to complain to EchoStar and immediately disclosing its one-sided perspective on the incident to the FCC.

In EchoStar's opinion, Pegasus has chosen to attempt to score political points and to encourage the FCC to step into a private commercial dispute. With all of the rhetoric, it cannot be denied or ignored that Pegasus charges consumers materially more for identical programming

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<sup>1</sup> EchoStar received multiple letters from Pegasus in this matter, to which EchoStar responded as follows: Pegasus letters dated October 16 and 30, 2001—EchoStar response dated October 26; Pegasus letters dated January 8 and 17, 2002—EchoStar response dated January 21, 2002; Pegasus letter dated February 13, 2002—EchoStar response dated March 4, 2002; Pegasus letter dated April 22, 2002—EchoStar response dated May 10, 2002; Pegasus letter dated August 27, 2002—EchoStar response dated September 6, 2002; Pegasus letters dated September 6 and 11, 2002; EchoStar response currently being prepared.

than does EchoStar. Contrary to the best interests of consumers, Pegasus has chosen to attempt to protect and expand its business through attempts to block a merger, rather than to compete aggressively on price and service.

Even so, EchoStar has taken efforts to ensure that its retailers and target marketing employees understand that the company does not condone this type of behavior and has taken steps to make sure that they are properly educated on this issue.

While EchoStar cannot control the conduct of independent retailers, Echostar has communicated its position to independent retailers in the most unequivocal terms, most recently via a televised, "Charlie Chat" program featuring EchoStar Chief Executive Officer, Charles Ergen, and by an August 2002 letter to all retailers. The letter reiterates Echostar's prior communications with retailers explaining that the merger has not yet been approved, and that no decision has been made concerning the receiving equipment that will be used by the combined company. Accordingly, EchoStar has made its position clear to independent retailers that *any claim that existing hardware will become obsolete post-merger, or any claim that there is an advantage to changing equipment now, is absolutely false and unacceptable*. Consistent with the commitment of EchoStar and Hughes that no satellite subscriber will be disenfranchised by the merger, EchoStar also makes clear to independent retailers that *any claim that current customers of EchoStar and DirecTV will be disadvantaged by the merger is likewise, absolutely false and unacceptable*. Where EchoStar is able to identify any retailer who may have allegedly violated its policies, EchoStar takes the following steps:

- 1) EchoStar contacts the retailer and requires a response to all allegations made.
- 2) EchoStar demands that the retailer provide to EchoStar its policies and practices for review.

To the extent that EchoStar finds that any such retailer may currently be in violation of EchoStar policies, EchoStar takes immediate disciplinary action, up to and including where applicable, termination of the retailer agreement.

Ms. Marlene H. Dortch  
September 12, 2002  
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This *ex parte* letter is being filed electronically with the Commission. If you have questions concerning this notice, please do not hesitate to contact me.

Respectfully submitted,



David R. Goodfriend  
Director, Legal and Business Affairs  
EchoStar Communications Corporation  
1233 20th Street, N.W.  
Suite 701  
Washington, DC 20036-2396  
202/293-0981

cc: James Bird  
Catherine Crutcher Bohigian  
C. Anthony Bush  
Neil Dellar  
Susan M. Eid  
Barbara Esbin  
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John Martin  
Joel Rabinowitz  
Stacy Robinson  
Marilyn Simon  
Rodney Small  
Donald Stockdale  
Peter Tenhula  
Bryan Tramont  
Douglas Webbink  
Harry Wingo  
Susanna Zwerling  
Patrick J. Grant



ECHOSTAR SATELLITE CORPORATION  
A Part of the EchoStar Group of Companies

September 6, 2002

**VIA FACSIMILE and  
REGULAR MAIL**

Mark E. Eyer, Esq.  
Pegasus Communications  
225 City Line Avenue  
Suite 200  
Bala Cynwyd, Pennsylvania 19004

**Re: Your letter dated August 27, 2002**

Dear Mark:

I am in receipt of your letter dated August 27, 2002. We take your concerns very seriously, and are in the process of investigating each of the issues raised in your letter. We have already taken a number of steps in response. I will attempt to provide you with a detailed response to your concerns shortly. However, while you can be sure we will investigate the issues you raise and take action if appropriate, whether or not we can share the results of our investigation with you hinges on whether you are willing to work on these matters constructively. You have made our past correspondence on similar issues publicly available, leading us to question whether you are genuinely concerned with resolving these issues, or instead are focused on other agendas. Consequently, in order for us to provide our investigative results to you we will need you to sign and return the attached confidentiality agreement to us. If you have questions or concerns with the language in the confidentiality agreement, please mark your proposed changes and email the document back to me.

Initially, I observe that each of the issues raised in your letter concerns independent retailers. In some instances the identity of the retailer is difficult to ascertain from the information provided, so our investigation is somewhat limited by the information you have provided. Consequently, please provide us with all information and documentation you have on each of these issues, and on any other similar issues. While EchoStar in no way condones or encourages inappropriate retailer activities, recognizing that these are independent retailers whose activities we can not fully control, in order to best respond we need you to include with your follow up information all actions that you have taken with respect to each issue or retailer, including all investigation and correspondence, and also include the action that you request that we take in each instance.

I look forward to hearing back from you soon.

A handwritten signature in black ink, appearing to read "C. Melton". The signature is fluid and stylized, with a long horizontal line extending from the end.

Christopher M. Melton  
Senior Counsel



## NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (the "Agreement") is entered into as of September \_\_\_\_, 2002 by and between EchoStar Satellite Corporation ("ESC"), having a place of business at 5701 South Santa Fe Drive, Littleton, Colorado 80120 and Pegasus Communications Corporation ("Pegasus"), having a place of business at 225 City Line Avenue, Suite 200, Bala Cynwyd, Pennsylvania 19004.

A. Pegasus has raised concerns that certain independent retailers have engaged in inappropriate conduct by misrepresenting certain facts regarding the pending merger between EchoStar Communications Corporation and Hughes Electronics Corporation. ESC is investigating the allegations raised by Pegasus and desires to discuss with Pegasus certain information developed through its investigations as well as any action that ESC has taken based on such information (the "Purpose").

B. In order to facilitate discussion and the sharing of information between the parties, the parties desire to treat all information concerning or related to the aforementioned investigations including, without limitation, any discussions thereof, any information developed pursuant thereto and any actions taken as a result thereof as confidential and proprietary information ("Confidential Information").

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually agree as follows:

1. This Agreement confirms the understanding between the parties concerning the disclosure of Confidential Information by ESC and/or its Affiliates to Pegasus and/or its Affiliates or by Pegasus and/or its Affiliates to ESC and/or its Affiliates, in either event the disclosing party (the "Disclosing Party") to the receiving party (the "Receiving Party"). For a period of three (3) years from the date of disclosure of Confidential Information by the Disclosing Party to the Receiving Party, unless written consent is otherwise granted by the Disclosing Party, Confidential Information shall not be disclosed to any third parties, and release, access to or use of disclosed Confidential Information shall be restricted to those employees, officers and representatives of the Receiving Party's organization who have a need to know the Confidential Information ("Receiving Party's Representatives", which term shall include the Receiving Party's Affiliates). All of Receiving Party's Representatives shall be informed of the confidential nature of the Confidential Information and the restrictions of this Agreement. The Receiving Party shall use the same degree of care to protect the secrecy and confidentiality of the Confidential Information as it uses to protect its own confidential information, and in all events at least a reasonable degree of care.

2. Confidential Information shall mean any and all information described in paragraph B, above, received by the Receiving Party from the Disclosing Party, whether written or oral, and if written, however produced or reproduced, which would logically be considered confidential by virtue of its relation to the subject matter hereof. For the purpose of this Agreement "Affiliates" shall mean any person or entity directly or indirectly controlling, controlled by or under common control with one of the parties to this Agreement.

3. The Receiving Party shall only make a reasonable number of copies of the Confidential Information as may be necessary for Receiving Party's Representatives in good faith to evaluate the Confidential Information. The Receiving Party shall not otherwise copy or reproduce any Confidential Information without first obtaining the prior written consent of the Disclosing Party. The original and all copies of all or any part thereof shall be returned promptly by the Receiving Party to the Disclosing Party upon request by the Disclosing Party. All copied or reproduced Confidential Information shall also be considered Confidential Information owned exclusively by the Disclosing Party and shall be treated

identically to any other Confidential Information in all respects. This Agreement shall not be construed as granting or conferring any interests or rights, by license or otherwise, in any Confidential Information disclosed hereunder.

4. The obligations imposed upon the parties herein shall not apply to Confidential Information which is or becomes generally available to the public through no wrongful act of the Receiving Party or released pursuant to the binding order of a government agency or a court so long as prior to any such release the releasing party provides the other party with the greatest notice permitted under the circumstances, so that the Disclosing Party may seek a protective order or other appropriate remedy. In any such event, the releasing party will disclose only that portion of such Confidential Information as is legally required to be furnished and will exercise reasonable efforts to obtain confidential treatment for any Confidential Information being disclosed.

5. No furnishing of Confidential Information and no obligation hereunder shall be construed to obligate either party to: (a) enter into any further agreement or negotiation with or make any further disclosure to the other party; (b) refrain from entering into any agreement or negotiation with any other third party regarding the same subject matter or any other subject matter; or (c) refrain from pursuing its business in whatever manner it elects even if this involves competing with the other party.

6. No failure or delay by either party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege under this Agreement.

7. If either party institutes a legal action to enforce or interpret this Agreement, the prevailing party shall be entitled to reimbursement by the non-prevailing party for all costs and reasonable attorney fees incurred in that action.

8. Both parties recognize that the unauthorized use or disclosure by the Receiving Party of any Confidential Information disclosed by the Disclosing Party would cause irreparable injury to the Disclosing Party. Both parties agree that the Disclosing Party shall be entitled to injunctive relief as well as reimbursement by the Receiving Party for legal and other expenses as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for the breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

9. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes any and all prior or contemporaneous oral or written representations relating thereto. No agent, employee or representative of either party has any authority to bind such party to any affirmation, representation or warranty; and, unless such is specifically included within this Agreement, it shall not be enforceable by the other party hereto. In the event a court of competent jurisdiction finds any of the provisions of this Agreement to be so over broad as to be unenforceable, such provisions may be reduced in scope by the court to the extent it deems necessary to render the provision reasonable and enforceable. In the event that the provisions of this Agreement conflict with the provisions of any other agreement executed between the parties, this Agreement shall control, unless the parties specifically state otherwise in a signed writing.

10. Any notices required by this Agreement shall be in writing and shall be given by hand or sent by first class mail to the applicable address noted in the initial paragraph.

11. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the parties hereunder, shall be governed, interpreted and enforced in accordance with the laws of the State of Colorado and the United States of America. The federal and state courts in the State of Colorado

shall have exclusive jurisdiction to hear and determine any claims, disputes, actions, or suits which may arise under or out of this Agreement. The parties agree and voluntarily consent to the personal jurisdiction and venue of such courts for such purposes.

12. This Agreement shall not be assigned by either party. The parties agree and acknowledge that a change in ownership of ESC as a result of a merger, consolidation, or reorganization shall not be considered an assignment under this Section 12 requiring Pegasus' consent and Pegasus shall have no right to delay, alter or impede any such transaction.

13. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

14. The individuals signing this Agreement warrant that they are authorized to and by their signatures intend to bind the corporation for which they purport to act.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

ECHOSTAR SATELLITE CORPORATION

By: \_\_\_\_\_  
Its: \_\_\_\_\_

PEGASUS COMMUNICATIONS CORPORATION

By: \_\_\_\_\_  
Its: \_\_\_\_\_